

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
<b>Qwest Communications</b>	)	<b>WC Docket No. 02-148</b>
<b>International Inc.</b>	)	
	)	
Consolidated Application for Authority	)	
to Provide In-Region, InterLATA Services	)	
in Colorado, Idaho, Iowa, Nebraska	)	
and North Dakota	)	

**DECLARATION OF LARRY B. BROTHERSON**

1. My name is Larry Brotherson. I am employed by Qwest Corporation ("Qwest") as a director in the Wholesale Markets organization. My business address is 1801 California Street, Room 2440, Denver, Colorado, 80202.

2. I have two degrees: a Bachelor of Arts degree from Creighton University in 1970 and a Juris Doctorate degree from Creighton University in 1973. In 1979, I joined Northwestern Bell Telephone Company. I have held several assignments within Northwestern Bell, and later within Qwest, primarily within the Law Department. Over the past 20 years, I have been a state regulatory attorney in Iowa, a general litigation attorney, and a commercial attorney supporting several organizations within Qwest. My responsibilities have included evaluating and advising the company on legal issues, drafting contracts, and

addressing legal issues that arise in connection with specific products. With the passage of the Telecommunications Act of 1996 ("the Act"), I was assigned to be the attorney in support of the Interconnection Group. In that role, I was directly involved in working with competitive local exchange carriers ("CLECs") negotiating contract language implementing various sections of the Act. In 1999, I assumed my current duties as director of wholesale advocacy.

3. My current responsibilities include coordinating the witnesses for all interconnection arbitrations and for hearings related to disputes over interconnection issues. Additionally, I work with various groups within the Wholesale Markets organization of Qwest in connection with regulatory proceedings associated with interconnection service issues. I have previously submitted testimony in this proceeding that described Qwest's processes for reviewing agreements to determine whether they are subject to the Act's filing requirements and the broad standard Qwest adopted in response to the uncertainty and disputes regarding the scope of Section 252. My credentials are a matter of record in this docket. 1/

4. The purpose of this Declaration is to address the claim of Mr. Kenneth Wilson, speaking on behalf of AT&T, 2/ that Qwest has not filed with state

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1/ Declaration of Larry Brotherson, Qwest I Reply, Tab 12 ("Qwest I Brotherson Decl.")

2/ AT&T Qwest III Comments, Declaration of Kenneth Wilson, Tab B ("AT&T Qwest III Wilson Decl.")

utility commissions in the nine states at issue here all of its agreements with CLECs that contain currently effective ongoing obligations pertaining to services provided under Section 251(b) or (c). This is substantively the standard that the FCC recently announced in its Declaratory Ruling issued in response to Qwest's petition on the subject. *See Memorandum Opinion and Order*, WC Docket No. 02-89, FCC 02-276 (rel. Oct. 4, 2002) ("FCC Declaratory Ruling").

5. In fact, as discussed in detail below, all such agreements are filed and either approved or pending approval no later than November 20, 2002. With regard to the latter pending agreements, Qwest also has separately made them publicly available on its wholesale website. The provisions in those agreements setting forth currently effective on-going obligations under Section 251(b) or (c), therefore, are available for CLECs to request under the applicable policies of Section 252(i) even in advance of their formal approval. As I will discuss below, Qwest has not requested approval of contract provisions with CLECs that no longer are in effect.

6. First of all, I would note that Qwest has filed hundreds of interconnection agreements in its region since passage of the Telecommunications Act. Qwest also has a Statement of Generally Available Terms on file in each state pursuant to Section 252(f).

7. Second, as discussed in my previous Declaration, when issues were raised earlier this year regarding Qwest's compliance with Section 252 in connection with certain other contracts with CLECs, Qwest took several steps. It

brought the matter to the attention of the state utility commissions in its region. It filed a Petition for Declaratory Ruling with the FCC requesting clarification as to which contractual arrangements with CLECs required filing with and approval by state commissions. It instituted new procedures to review contracts with CLECs and ensure that all necessary contracts were filed. *See Qwest I Brotherson Decl.* at ¶¶ 7-8.

8. In particular, in May Qwest adopted a policy for evaluating whether new contracts with CLECs needed to be filed. Under that policy Qwest has been filing all new contracts, agreements, and letters of understanding negotiated with CLECs that create obligations in connection with Sections 251(b) or (c). This standard itself has been applied broadly to encompass all contractual matters except settlements of historical disputes, order forms, and agreements related to bankruptcy matters. Qwest is confident that all new contracts entered into with a CLEC since the spring have been filed if they meet this standard. Furthermore, because this company policy encompasses the new standard announced by the FCC in the recent Declaratory Ruling, all recent contracts meeting the FCC standard necessarily have been filed.

9. In addition, Qwest has filed all currently effective provisions in other previously unfiled contracts with CLECs insofar as such provisions involve ongoing obligations related to Sections 251(b) or (c). Qwest filed all relevant agreements in Iowa on July 29 and those agreements were approved on August 27. Similarly, Qwest filed relevant agreements in the other eight states on August 21

and 22. Qwest asked each state commission to approve the agreements such that, to the extent any active provisions of such agreements relate to Section 251(b) or (c), they are formally available to other CLECs under Section 252(i). In conformance with the structure of Section 252, including the state-specific approval process, opt-in opportunities will be provided on a state-specific basis under Section 252(i).

10. Some states already have approved the agreements filed in August, and the rest will do so on or before expiration of the 90-day review period specified in Section 252(e)(4). Qwest provided a report on the status of these filings with this Application. *See* Qwest III Addendum, Tab 13. An update of that summary is provided here as Exhibit A.

11. In addition to filing the agreements, Qwest posted them on its website and indicated that it would permit CLECs to request the currently effective provisions under opt-in policies applicable under Section 252(e) pending formal Commission action approving the agreements. [3/](#)

12. As noted above, the standard Qwest used in August 2002 to determine which provisions of previously unfiled contracts to file and to make available on its website was whether the provisions create on-going obligations that

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[3/](#) As Kenneth Wilson points out, Qwest's website contains twenty-six separate interconnection agreements, listed according to the states in which those agreements are in effect. Contrary to Mr. Wilson's insinuation, this organization is for the convenience of CLECs, so they may easily determine which agreements are available for the jurisdictions in which they operate, and was not intended to create the impression that Qwest has posted a greater number of agreements.

relate to Section 251(b) or (c) and have not been terminated or superseded by agreement, commission order, or otherwise. This standard encompasses the definition of “interconnection agreement” recently articulated in the FCC Declaratory Ruling. It follows that all Qwest agreements with CLECs meeting the FCC’s standard either are filed and approved, or filed with approval pending no later than November 19 or 20, 2002.

13. Mr. Wilson mistakenly asserts that, notwithstanding the above, some Qwest agreements with CLECs remain either unfiled or otherwise unavailable. However, Mr. Wilson does not take into account that the contracts to which he refers either actually have been filed for state commission approval, or they have expired, been terminated or been superseded by other agreements or Commission orders.

14. Attached to my declaration as Exhibit B is a modified version of Mr. Wilson’s matrix, demonstrating that Qwest has indeed filed under Section 252 each currently effective provision with an ongoing obligation related to Section 251(b) and (c) and that many of the agreements referenced by Mr. Wilson are no longer in effect. As with Mr. Wilson’s matrix, the first three columns show the name of the company with whom Qwest entered into the agreement, the date of the agreement, and the title of the agreement. The fourth column indicates in which of the relevant states the agreement was or is effective, and the fifth column indicates whether the agreement is currently posted on Qwest’s wholesale website. The sixth column states briefly the current status of any terms relating to Section 251(b) or (c)

services, that is, whether the terms have been filed for state commission approval or are no longer in effect. The final column explains in more detail the nature of the terms and their current status.

15. The matrix demonstrates that Qwest has not failed to file any agreement insofar as that agreement contains currently effective obligations related to Section 251(b) or (c). Individuals with extensive regulatory background and experience within Qwest relied on the recent FCC Order to support the conclusions in this matrix and verified the status of the terms.

16. Mr. Wilson points to the report of the staff of the Arizona Corporation Commission (“ACC Staff”) for its conclusion that twenty-eight previously unfiled agreements should have been filed pursuant to Section 252. However, Mr. Wilson overlooks the fact that some of the agreements identified by the ACC Staff are merely form contracts for services already provided for in approved interconnection agreements. These form contracts (for services such as signaling, call-related databases, directory assistance, and operator services) merely give effect to the terms in the filed agreements or the SGAT and are substantively identical for every CLEC. The FCC Declaratory Ruling confirmed that “forms completed by carriers to obtain service pursuant to terms and conditions set forth in an interconnection agreement” are not subject to Section 252(a)(1). *See* FCC Declaratory Ruling at ¶ 13.

17. AT&T also has suggested that Qwest may have oral agreements with CLECs that meet the requirements for filing under Section 252 announced in

the FCC's Declaratory Ruling. It is not Qwest's business policy or practice to address such interconnection matters other than through written contracts, and Qwest is not aware of any oral agreements that are in effect today that would come within the purview of Section 252's filing requirements.

18. PageData has claimed that Qwest failed to file contracts in Idaho as interconnection agreements although it submitted such contracts in Iowa. PageData references contracts with Arch Communications Group (a Confidential Billing Settlement Agreement with U S WEST Communications, Inc. executed June 16, 2000) and with Paging Network (a Confidential Billing Settlement Agreement with Qwest Corporation dated June 23, 2001). However, these contracts were submitted in Iowa because, to assure completeness in compliance with the terms of the relevant order of the Iowa Utilities Board, Qwest provided copies of agreements that had been superseded or terminated, as well as of settlement agreements with no ongoing effect. (The Iowa Board subsequently clarified that settlements of disputes that did not create ongoing obligations did not require filing, and the FCC Declaratory Ruling reaches the same result.) In contrast, Qwest has filed in Idaho only those agreements with currently effective terms creating an ongoing obligation under Section 251. Neither of the contracts referenced by PageData do so. In that regard, it should be noted that Paging Network operates entirely under the current interconnection agreement of its now-affiliate, Arch, and that Arch in turn operates pursuant to an interconnection agreement filed with the Idaho Commission on July 12, 2000 and approved on September 1, 2000.



19. For the state commissions' benefit, when Qwest submitted previously unfiled contracts with CLECs, it marked, highlighted or bracketed those terms and provisions in the agreements that Qwest believes relate to Section 251(b) or (c) services, and have not been terminated or superseded by agreement, commission order, or otherwise. Qwest believed this would reduce the confusion that could otherwise arise given that these contracts were not prepared as interconnection agreements, sometimes cover multiple subjects, and are of various ages.

20. Mr. Wilson complains that Qwest "selected the provisions that would be available without discussion with CLECs" and thereby did not disclose additional provisions and somehow undermined CLECs' opt-in rights. That is not correct. Although Qwest marked the effective provisions that it believed relate to Section 251(b) and (c), Qwest submitted the entire contracts to state commissions, which were, of course, free to disagree with Qwest's determinations. Furthermore, the going forward terms posted on Qwest's website are available to other CLECs under the same policies that apply under Section 252(i). The provisions that Qwest did not mark in its submissions to state commissions and did not post on its website were only those that are no longer in effect (because they have expired or been terminated or superseded) or in no way relate to Section 251(b) and (c). Such provisions would not be available for opt in pursuant to Section 252(i) in any event.

21. This concludes my Declaration.

**VERIFICATION**

I declare under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_\_, 2002.

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Larry B. Brotherson